SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1740~~ 70-198

IN THE MATTER

of

The Settlement of the Final Account of Proceedings of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee under an Indenture of Trust Dated December 19, 1935 made by MARGARET MAHER ACHESON for the benefit of EDWARD GOODRICH ACHESON, III.

LAURA ACHESON DOWELL, EDWARD GOODRICH ACHESON, IV, MARGARET ACHESON KENNEDY, THOMAS R. ACHESON and JOHN W. ACHESON,

Petitioners,

v.

HELEN F. ACHESON, STEPHEN A. HELMAN, as Guardian *ad Litem* of LINDA BELLE ACHESON, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, as Executor of the Last Will and Testament of Edward Goodrich Acheson, III, Deceased, and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee under an Indenture of Trust dated December 19, 1935 made by Margaret Maher Acheson for the benefit of Edward Goodrich Acheson, III,

Respondents.

BRIEF FOR RESPONDENT BANK OF AMERICA, N.T.&S.A., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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June 23, 1971

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Question Presented

Did New York erroneously give full faith and credit, as against Petitioners, to a California domiciliary probate court's interpretation of provisions of a will exercising a general testamentary power of appointment over the re-

mainder of an *inter vivos* trust, established by a Florida settlor and administered by a New York trust company, when Petitioners had appeared generally in the California proceeding, to which the New York trustee was not an indispensable party, and had made an unsuccessful direct attack in California on that interpretation?

Statement

Petitioners seek review by this Court of an order of the New York Court of Appeals, entered April 7, 1971, affirming (1) an order entered June 30, 1969, by the Supreme Court, New York County (R. 6)*, which denied their motion for permission to take depositions in California of four California residents unless Petitioners should agree to pay, pending the conclusion of the case, expenses incurred in connection with the depositions and (2) an order of that court entered September 17, 1969 (R. 14) incorporating the June 30, 1969 order. This second order settled the account of Morgan Guaranty Trust Company of New York (the "Trustee"), construed the *inter vivos* trust agreement dated December 19, 1935 and the will of Edward Goodrich Acheson, III (the "Decedent"), directed distribution of the balance of the principal to Respondent Bank of America, National Trust & Savings Association, as Executor of the Last Will and Testament of the Decedent (the "Executor") with directions for the application of the fund by the Executor, and granted allowances for services of counsel and guardian *ad litem*.

The facts of the underlying controversy are set forth in the opinion of Chief Judge Fuld, dated April 7, 1971, at 28 N.Y. 2d 155, 155-159 (1971) (A 1 - A 5).

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* References are to the printed record, e.g. "R. 7," and the Appendix incorporated in the petition, e.g. "A 1."

Argument

The New York Court of Appeals in this case held that New York was required to give full faith and credit, as against Petitioners, to the California domiciliary probate court's interpretation of provisions of a will exercising a general testamentary power over the remainder of an *inter vivos* trust administered in New York, where Petitioners had made an unsuccessful direct attack in California on that interpretation. Given such interpretation, the New York Court of Appeals properly affirmed the unanimous decision of the Appellate Division, First Department, which affirmed the order of the New York Supreme Court at Special Term holding that the exercise of the power of appointment was valid under New York law.

Under the tests set forth in Rule 19 of the Rules of this Court, a petition for a writ of certiorari to review a decision of a state court should not be granted unless there are "special and important reasons therefor," such as the fact that the state court has decided a substantial federal question not previously determined by this Court or has decided a substantial federal question in a manner which conflicts with the applicable decisions of this Court.

Petitioners' only alleged basis for grant of their petition for a writ of certiorari is that this case presents an important federal question which has been decided by the New York Court of Appeals contrary to the holding of this Court in *Hanson* v. *Denckla,* 357 U.S. 253 (1958). That assertion is clearly erroneous. As shown below, this case presents a "special and unique" factual situation, and as Chief Judge Fuld stated, "The appellants' reliance on *Hanson* v. *Denckla* (357 U.S. 235) is misplaced" (A9). Accordingly, under the tests of Rule 19 the petition for a writ of certiorari herein should not be granted.

I

THIS CASE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION. THE FACTS OF THIS CASE ARE, AS THE COURTS BELOW STATED, "SPECIAL AND UNIQUE" AND "UNLIKELY TO BE DUPLICATED."

Certiorari should not be granted in this case because it presents "no special and important reasons therefor." Petitioners urge that this case presents a substantial federal question claiming the decision below will have widespread effect as a precedent. On the contrary, the precedential value of the decision of the New York Court of Appeals below is negligible because two pivotal facts present here are unlikely to be repeated in any future case.

First, the New York Supreme Court, Special Term, which had before it all of the parties interested in the trust, unprecedentedly elected to suspend its decision on the validity of Decedent's exercise of the power of appointment pending the institution and conclusion of the California heirship proceeding. Had the New York court determined the validity of the exercise of the power in the usual way, i.e., without seeking the aid of the California court's interpretation of Decedent's will, the issue of full faith and credit would not have arisen.

Second, Petitioners, finding the decision rendered by the California court in the construction proceeding not to their liking, sought to vacate that decision under § 473 of the California Code of Civil Procedure*, thereby making a general appearance which—and there is no disagreement among the judges of the Court of Appeals on this point—gave the California court personal jurisdiction over Petitioners. If Petitioners had wholly ignored the California proceeding as they first set out to do, or if they had sought and been able to qualify for the benefit

* § 473 of the California Code of Civil Procedure provides in part: "The court may *** relieve a party *** from a judgment, order, *** taken against him through his mistake, inadvertence, surprise or excusable neglect."

of § 416.2 of the California Code of Civil Procedure*, which in effect permits a special appearance for the purpose of making a § 473 motion, Petitioners would not have made a general appearance in the heirship proceeding, and it would not have been possible for the New York Court of Appeals to hold, as it did, that the California court's interpretation of Decedent's will was binding *in personam* against them.

Thus, the opinions of the New York Supreme Court and the New York Court of Appeals below both emphasized that the facts of this case are unique. Mr. Justice Gellinoff in the Supreme Court opinion said (A 46):

> "This court's decision here is rested entirely on the unique (and unlikely to be duplicated) factual situation present in the proceeding pending before this court."

Similarly, Chief Judge Fuld, writing for the Court of Appeals, said (A 9):

> "The case presents a special and unique factual situation. . . ."

Moreover, this case is not important with respect to the amount in controversy. Indeed, the amount in controversy (less than $85,000**) is small in comparison with the expenses of counsel to date.

In view of the extraordinary combination of facts present here and this case's extremely limited applicability as precedent, it is respectfully submitted that this case does not merit the attention of this Court, since it does not raise a substantial federal question.

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* § 416.2 of the California Code of Civil Procedure provides: "If a defendant or cross-defendant moves to quash service of summons in the manner provided in Section 416.1 of this Code, and also moves for relief under Section 473 of this Code, the latter motion shall not constitute a general appearance by the moving party."

** If Petitioners had succeeded they would have received 5/9ths of the balance, after commissions and expenses of this litigation, of a trust fund determined by the Trustee to be worth $152,188 as of May 14, 1971.

II

The Decision Of The State Court Is In Accord With Hanson v. Denckla.

The only case relied upon by Petitioners in arguing that the decision of the New York Court of Appeals is not in accord with the applicable decisions of this Court is *Hanson* v. *Denckla,* 357 U.S. 235 (1958).

In *Hanson,* the settlor of an *inter vivos* trust, administered by a Delaware trustee, reserved to herself the right to appoint the trust corpus by will or otherwise. At the time of the creation of the trust the settlor was a domiciliary of Pennsylvania. Several years later she moved to Florida where she executed a will and exercised the *inter vivos* power of appointment. The settlor's will was probated in Florida. Residuary legatees under the will sought a determination in Florida that the trust assets were part of the settlor's residuary estate because the trust was invalid, with the result that the trust assets passed to them under the will, rather than to further trusts under the power of appointment. The Delaware trustee was not personally served and did not appear in the Florida proceeding.

The Florida Supreme Court, holding that it had jurisdiction over the nonresident trustee and the other nonresident defendants, ruled that the trust was invalid, the power of appointment was testamentary and void under the applicable Florida law, and that the appointive property passed under the residuary clause of the settlor's will.

The legatees unsuccessfully urged that the Florida decree was entitled to full faith and credit in a Delaware proceeding which had been brought by the executrix to determine who was entitled to participate in the trust assets held in Delaware. The Delaware court ruled that the trust and power of appointment were valid under the applicable

Delaware law and that the trust corpus had properly been paid over to trustees to be held in further trust as appointed by the settlor. On certiorari this Court affirmed the judgment of the Delaware Supreme Court.

Hanson was fully considered and distinguished from this case on its facts in the opinions of Chief Judge Fuld (A 9) and Mr. Justice Gellinoff (A 38-A 44). Several points, however, should be emphasized.

First, in *Hanson* the issue was the validity of the *inter vivos* trust itself. This Court held that the Florida courts could not oust the Delaware trustee of his title to the trust property in a proceeding to which the trustee was not a party since under Florida law "the trustee is an indispensable party over whom the court must acquire jurisdiction before it is empowered to enter judgment in a proceeding affecting the validity of a trust" (357 U.S. at 254).

Here, the California court did not purport to construe or determine the validity of the New York trust or make any direction with respect to it; the California court merely interpreted Decedent's will and gave the California Executor instructions for administering the property if and when the Executor received the property from the Trustee. Accordingly, the Trustee, which has properly recognized its role of stakeholder in this proceeding, was not an indispensable party to the heirship proceeding under the applicable California statute, § 389 of the Code of Civil Procedure.* Cf. *Atkinson* v. *Superior Court,* 49 Cal. 2d 338, 316 P. 2d 960 (1957) and *Muggill* v. *Donnelly Corp.* 62 Cal. 2d 239, 398 P. 2d 147 (1965). Petitioners have cited to this Court no case to the contrary, and their expert on California law frankly admits that he "found no case expressly holding that a nonresident trustee of a foreign trust is an indispensable party under C.C.P. § 389" (R. 168-169).

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* California Code of Civil Procedure, § 389, provides in part: "A person is an indispensable party to an action if his absence will prevent the court from rendering any effective judgment between the parties. . . ."

Second, the crux of the *Hanson* decision was that it would be unfair to compel residents of other states to journey to a state which could claim no substantial affiliation to the *inter vivos* trust to litigate the intrinsic validity of the trust. The decision of the New York Court of Appeals herein will not, contrary to Petitioners' assertion, compel parties interested in the trust estate to litigate in the state of the donee's domicile. The New York Court of Appeals merely held that a party may not voluntarily make a general appearance in a proceeding in a sister state in which all indispensable parties are before the court, seek affirmative relief, fail to raise their objections to the jurisdiction of that court, decide to let the adverse ruling of that court stand instead of appealing it, and then collaterally attack that decision in New York.

Petitioners contend that the decision of the New York Court of Appeals will permit a party to circumvent *Hanson* by substituting the law and courts of the domicile of the donee of the power for the law and courts of the state of administration of the trust. That assertion obviously is without foundation. No one has suggested that the courts of any state other than New York can determine whether Decedent's exercise of the power of appointment was valid or that a sister state can settle the Trustee's account. Certainly the California court did not attempt to do so. As Chief Judge Fuld stated (A 8), "[T]he validity of the power's exercise is a question to be determined solely by the courts of this State." All that the New York Court of Appeals held was that because of the "special and unique" facts of this case full faith and credit requires that the California court's interpretation of the will be followed in New York. Given that interpretation, the exercise of the power clearly was valid under New York law.

Points II and III of the petition, although subsumed under the heading "Reasons for Granting the Writ," are

addressed solely to the merits of this case. While the Executor is confident that Respondents would prevail on the merits, it claims it unnecessary to argue the merits in response to a petition for certiorari.

Conclusion

Certiorari should be denied, since the order of the Supreme Court of the State of New York, as affirmed by the Appellate Division of the Supreme Court, First Department, and by the New York Court of Appeals, presents no substantial federal question and is in accord with the decisions of this Court.

Respectfully submitted,

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